BILL NO. S-80-08-34

SPECIAL ORDINANCE NO. S-113-80

AN ORDINANCE approving an Agreement with Holy Scripture Evangelical Lutheran Church of Fort Wayne, Indiana for construction of a sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated July 9, 1980, between the City of Fort Wayne, by and through its Mayor and Board of Public Works and Holy Scripture Evangelical Lutheran Church of Fort Wayne, Indiana, for:

SANITARY SEWER:

Beginning at an existing manhole #8 located over an existing 15" sanitary sewer, said manhole being situated 1440 (+) feet East and 230 (+) feet North of the centerline intersection of Dunkelberg Road and Kinnerk Road; thence Westerly, a distance of 220 feet to proposed manhole #1; thence Westerly, a distance of 400 feet to proposed manhole #2; thence Westerly, a distance of 220 feet to proposed manhole #3; thence Westerly, a distance of 315 feet to proposed manhole #4; thence Westerly, a distance of 220 feet to proposed manhole #5; thence Westerly, a distance of 290 feet terminating at a proposed manhole #6.

of which the developer shall pay the entire cost and expense of the construction of said sewer in the amount of $24,427.00, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

COUNCILMAN

APPROVED AS TO FORM AND LEGALITY AUGUST 27, 1980.

JOHN E. HOFFMAN
City Attorney

Read the first time in full and on motion by Burns, seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on ~~, the~~ day of , 19, at o'clock M.,E.S.T.

DATE: 8-26-80

CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Talarico, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

| | AYES | NAYS | ABSTAINED | ABSENT | TO-WIT: |
|---|---|---|---|---|---|
| TOTAL VOTES | 8 | 0 | | 1 | |
| BURNS | X | | | | |
| EISBART | X | | | | |
| GiaQUINTA | X | | | | |
| NUCKOLS | X | | | | |
| SCHMIDT, D. | X | | | | |
| SCHMIDT, V. | | | | X | |
| SCHOMBURG | X | | | | |
| STIER | X | | | | |
| TALARICO | X | | | | |

DATE: 9-9-80

CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-113-80

on the 9th day of September, 19 80.

ATTEST: (SEAL)

CHARLES W. WESTERMAN - CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of September, 19 80, at the hour of 11:30 o'clock A.M.,E.S.T.

CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 12th day of Sept 19 80 at the hour of 10 o'clock A M.,E.S.T.

WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-80-08-34

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS REFERRED AN ORDINANCE approving an Agreement with Holy Scripture Evangelical Lutheran Church of Fort Wayne, Indiana for construction of a sanitary sewer

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

PAUL M. BURNS, CHAIRMAN

BEN EISBART, VICE CHAIRMAN

JOHN NUCKOLS

MARK GiaQUINTA

ROY SCHOMBURG

DATE 9-9-80 CONCURRED IN

CHARLES W. WESTERMAN, CITY CLERK

8/12/80

69-93-10 H.I. 7/9/80

# AGREEMENT

## FOR

## SEWER EXTENSION

THIS AGREEMENT, made in triplicate this 9th day of July, 1980, by and between Holy Scripture Evangelical Lutheran Church of Fort Wayne, Indiana, Inc., an Indiana not for profit corporation, hereinafter referred to as "DEVELOPER", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "CITY",

WITNESSETH:

WHEREAS, the DEVELOPER desires to construct a sanitary sewer described as follows:

Sanitary Sewer

Beginning at an existing manhole #8 located over an existing 15" sanitary sewer, said manhole being situated 1440 (±) feet East and 230 (±) feet North of the center-line intersection of Dunkelberg Road and Kinnerk Road; thence Westerly, a distance of 220 feet to proposed manhole #1; thence Westerly, a distance of 400 feet to proposed manhole #2; thence Westerly, a distance of 220 feet to proposed manhole #3; thence Westerly, a distance of 315 feet to proposed manhole #4; thence Westerly, a distance of 220 feet to proposed manhole #5; thence Westerly, a distance of 290 feet terminating at a proposed manhole #6.

Said sanitary sewer shall be 8 inches in diameter, in accordance with plans, specifications, and profiles heretofore submitted to the CITY and now on file in the Office of the Chief Engineer of the Water Pollution Control Engineering Department of the CITY and known as Holy Scripture Church Sanitary Sewer, which plans, specifications and profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the DEVELOPER has an interest, but also adjoining land areas.

WHEREAS, the cost of construction of said sewer is represented to be $24,427.00 composed of $21,427.00 for construction costs and $3,000.00 for consultant engineering.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The DEVELOPER shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the CITY, under private contract with CITY approval. All work and materials shall be inspected by the CITY and conform with all CITY standards and specifications. Upon completion, said sewer shall become the property of CITY and all further maintenance thereafter shall be borne by the CITY.

2. COST OF CONSTRUCTION

The DEVELOPER agrees to pay the entire cost and expense of construction of said sewer, in cash, and to hold the CITY harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER

Said sewer, when accepted by the CITY, will initially serve the following described real estate of the DEVELOPER:

> Part of Lot #12 of the Subdivision of that part of Richardville Reserve West of the St. Mary's River (also known as Siemon's Subdivision), Township 30 North, Range 12 East, Allen County, Indiana, as established by the survey map thereof recorded in Deed Record 106, page 141 in the Office of the Recorder of Allen County, Indiana, together with part of a certain 100 acre tract, said 100 acre tract being a part of the Richardville Reserve West of the St. Mary's River in Wayne and Pleasant Township, said 100 acre tract being described in Document #72-00663 in the Office of the Recorder of Allen County, Indiana, said parts being in aggregate more particularly described as follows, to wit:
>
> Beginning at a point on the Westerly line of said Lot #12, said point being situated 190.7 feet, N 33°-30' W of the most Southerly corner of the aforementioned Lot #12, said point also being on the centerline of Dunkelberg Road and the centerline of the Kinnerk Road; thence continuing N 33°-30' W, on and along the Westerly line of said Lot #12, being also the centerline of Kinnerk Road, a distance of 285.3 feet; thence N 57°-24' E, a distance of 305.7 feet; thence S 68°-36' E, a distance of 225.8 feet; thence S 01°-20' E, a distance of 312.84 feet to the centerline of said Dunkelberg Road; thence S 88°-40' W, on and along said centerline, a distance of 317.7 feet to the point of beginning, containing 3.208 acres of land, subject to legal right-of-way for Dunkelberg Road and Kinnerk Road and subject to all easements of record.

As the DEVELOPER will pay for the entire cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer, or the use thereof, by the present or future owners of said aforedescribed real estate, except as to such standard tap-in and inspection fees as are customarily charged by the CITY for connections to CITY sewer main.

An area connection charge of $442.73 per acre must be paid to CITY at the time of connection by the DEVELOPER for area aforedescribed. This area connection charge represents the oversizing cost expended by the CITY and the Fort Wayne Community Schools Building Corporation for sewer line pertaining to St. Mary's Interceptor, Resolution No. 214, as recorded in Instrument 71-05984 in the Office of the Recorder of Allen County, Indiana.

An additional area connection charge of $218.98 per acre must also be paid to the CITY at the time of connection by the DEVELOPER for the area aforedescribed. This area connection charge represents the pro-rata share of the cost of the extension of the CITY sewer by Shermeyer Associates, Inc. for sewer line known as Pheasant Run Offsite Sanitary Sewer as recorded in Instrument 72-28067 in the Office of the Recorder of Allen County, Indiana.

4. CHARGE AGAINST EXCESS AREA

Said sewer, however, also serves an additional or excess area as shown on the attached Exhibit "A". In the event any present or future owner of real estate shall at any time within fifteen (15) years of the date of this agreement, desire to use said sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to service such land, CITY, through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said excess area pay to the CITY, in addition to the costs of standard tap-in and inspection fees, the sum of $0.031125 per square foot for the area served by each such connection and use, which represents the pro-rata share of the cost of the extension of the CITY sewer to said area. Any amount so collected by the CITY shall be paid by the CITY within sixty (60) days of the receipt thereof to the DEVELOPER.

An area connection charge of $442.73 per acre must be paid to CITY at the time of connection by any such owner or owners of any excess area sought to be served by the herein described sanitary sewer. This area connection charge represents the oversizing cost expended by the CITY and the Fort Wayne Community Schools Building Corporation for sewer line pertaining to St. Mary's Interceptor,

Resolution No. 214, as recorded in Instrument 71-05984 in the Office of the Recorder of Allen County, Indiana.

An additional area connection charge of $218.98 per acre must also be paid to the CITY at the time of connection by any such owner or owners any excess area sought to be served by the herein described sanitary sewer. This area connection charge represents the pro-rata share of the cost of the extension of the CITY sewer by Shermeyer Associates, Inc. for sewer line known as Pheasant Run Offiste Sanitary Sewer as recorded in Instrument 72-28067 in the Office of the Recorder of Allen County, Indiana.

5. WAIVER OF CHARGE AGAINST EXCESS AREA

In consideration of a grant of easement right-of-way for the installation of said sewer across Excess Area #1 as shown on the attached Exhibit "A", DEVELOPER hereby agrees to waive the local area charge created herein against said Excess Area #1. The owner or owners of said Excess Area #1 remain responsible for the payment of the aforedescribed area connection charges at the time of connection to said sanitary sewer.

6. BOND

This contract is subject to DEVELOPER furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer, said bond to serve as a guarantee of said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the CITY.

7. LIMITATION ON USE.

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water run-off caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

8. WAIVER OR RIGHT TO REMONSTRATE AGAINST ANNEXATION

The DEVELOPER, for itself, its successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by CITY of any territory now or hereafter owned by him, as described in Article 3 herein.

The DEVELOPER further agrees that any deeds, contracts, or other instruments of conveyance made by the DEVELOPER, its successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, ~~which provisions contained in this article,~~ which provisions shall run with the land and the acceptance of the delivery of any such instrument from the DEVELOPER, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee or contract purchaser and their successors in title.

The DEVELOPER further agrees to record an executed copy of this contract, in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of CITY as hereinafter provided. Any owner or owners of property which is now, or hereafter, located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by the City of such land or of the territory in which it is located or of the area served by said sewer.

9. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Section 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17 and I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

10. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscirbed to this Agreement the day and year first above written.

DEVELOPER: Holy Scripture Evangelical Lutheran Church of Fort Wayne, Indiana, Inc.

By Rudy Koenemann
Rudy Koenemann
President

ATTEST Weldon K Schaefer
Weldon Schaefer
Secretary

STATE OF INDIANA )
) SS:
COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Rudy Koenemann and Weldon Schaefer, by who acknowledged the execution of the foregoing agreement for sewer extension as and for its voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 23rd day of May, 1980.

Deanna Faust
Deanna Faust - Notary Public
Resident of Allen County, Indiana

My Commission Expires:

10-11-81

CITY OF FORT WAYNE, INDIANA

By _____
Win Moses, Jr. Mayor

BOARD OF PUBLIC WORKS

By _____
Mark L. Akers, Chairman

By _____
Herbert R. Gamache, Member

By _____
Roberta Anderson Staten, Member

ATTEST _____
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY

_____
City Attorney

STATE OF INDIANA )
) SS:
COUNTY OF ALLEN )

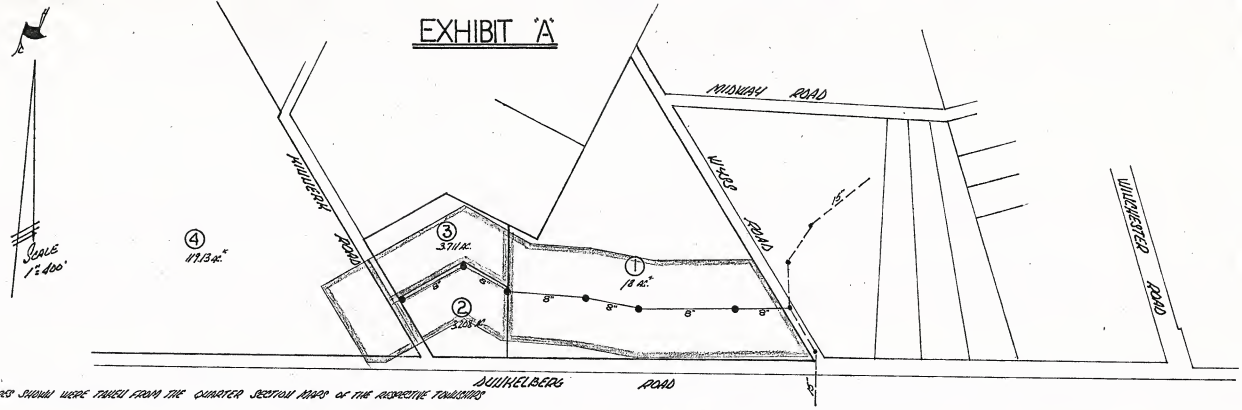
Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Win Moses, Jr., Mark L. Akers, Herbert R. Gamache, Roberta Anderson Staten, and Sandra E. Kennedy, known to me to be the Mayor, the Members of the Board of Public Works and the Clerk of the Board of Public Works, said Board of the City of Fort Wayne, Indiana, respectively, and acknowledged the execution of the within agreement as their voluntary act and deed of said city.
WITNESS my hand an notarial seal this 9th day of July, 1980.

_____
Notary Public
Resident of Allen County, Indiana

My Commission Expires:
3-6-84

This instrument prepared by Philip R. Boller, Chief Water Pollution Control Engineer, and Richard I. Snouffer, Associate City Attorney.

# EXHIBIT "A"




*THE ACRES SHOWN WERE TAKEN FROM THE QUARTER SECTION MAPS OF THE RESPECTIVE TOWNSHIPS

| EXCESS AREA | 1 ASSESSABLE AREA LOCAL CHARGES | 2 ASSESSABLE AREA AREA CONNECTION CHARGES | 3 PROPERTY OWNER | 4 LOCAL SEWER EXTENSION COST (SQ. FT.) | 5 LOCAL SEWER EXTENSION COST (AC.) | 6 AREA CONNECTION FEE - ST. MARY'S INTERCEPTOR | 7 AREA CONNECTION FEE - PHEASANT RUN SANITARY SEWER | PROJECT COST TOTALS PER PROPERTY OWNER (5-6-7) |
|---|---|---|---|---|---|---|---|---|
| #1 | 414,000 S.F. | 18 AC. | ARTHUR H. & M. GERTRUDE KYASS | $0.031125 | $14,442.00 | $7,949.14 | $3941.64 | $26,352.78 |
| #2 | 112,000 S.F. | 3.208 AC. | HOLY SCRIPTURE EVANGELICAL LUTHERAN CHURCH | $0.031125 | $3,486.00 | $1,420.28 | $702.49 | $5,608.77 |
| #3 | 131,200 S.F. | 3.711 AC. | VISITATION EVANGELICAL LUTHERAN CHURCH | $0.031125 | $4,083.60 | $1,642.97 | $812.63 | $6,539.20 |
| #4 | 77,600 S.F. | 1.78 AC. | GUSTAV G. & BEATRICE M. GERKE | $0.031125 | $2,415.40 | $788.06 @ $442.73/AC. | $389.78 @ $218.99/AC. | $3593.24 |

TOTAL = 784,800 S.F.

TOTAL LOCAL COST OF SEWER — CONSTRUCTION $21,427.00 + ENGINEERING $3,000.00 = TOTAL = $24,427.00

LOCAL COST PER S.F. = $24,427.00 / 784,800 = $0.031125

TITLE OF ORDINANCE SPECIAL ORDINANCE AGREEMENT FOR SEWER EXTENSION DUNKELBERG RD & KINNERK RD

4941

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

S-80-08-34

SYNOPSIS OF ORDINANCE Beginning at an existing manhole #8 located over an existing 15" sanitary sewer, said manhole being situated 1440 (+) feet East and 230 (+) feet North of the centerline intersection of Dunkelberg Rd and Kinnerk Rd; thence Westerly, a distance of 220 feet to proposed manhole #1; thence Westerly, a distance of 400 feet to proposed manhole #2; thence Westerly, a distance of 315 feet to proposed manhole #4; thence Westerly, a distance of 220 feet to proposed manhole # 5; thence Westerly a distance of 290 feet terminating at a proposed manhole #6.

AGREEMENT FOR SEWER EXTENSION ATTACHED

EFFECT OF PASSAGE Construction of above described Sewer extension with Holy Scripture Evangelical Lutheran Church of Ft. Wayne, Indiana.

EFFECT OF NON-PASSAGE SEWER WOULD NOT BE INSTALLED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) $24,427.00 to be paid by developer

ASSIGNED TO COMMITTEE Utility

EP